

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

JACOB THOMAS DONEY,

Defendant-Appellee.

UNPUBLISHED

September 11, 2007

No. 269251

Mecosta District Court

LC No. 04-016604-AR

AFTER REMAND

Before: Owens, P.J., and White and Hoekstra, JJ.

PER CURIAM.

This case is before us for the second time. On the prosecution's appeal from the circuit court order affirming the district court's grant of defendant's motion to suppress, we remanded to the district court for supplemental findings.¹ The district court again ruled in defendant's favor. The prosecution then filed a delayed application for leave to appeal, which this Court granted. We affirm.

¹ This panel's order of remand to the district court stated:

The district court's decision focused on *Terry v Ohio*, 392 US 1; 88 S Ct 1868; 20 L Ed 2d 889 (1968), and did not address the prosecutor's argument that this was merely a consensual police-citizen encounter and that defendant was free to leave, see *Florida v Royer*, 460 US 491, 497; 103 S Ct 1319; 75 L Ed 2d 229 (1983). We also note that the court held an evidentiary hearing on April 10, 2006, but did not find that the testimony added to the case, and reaffirmed its earlier ruling based on the existing record. We remand for consideration and findings regarding the question whether the encounter rose to the level of a *Terry* stop, and for the court to make findings regarding the April 10, 2006 hearing to the extent possible, to facilitate this Court's review after remand. . . . We retain jurisdiction. [*People v Doney*, unpublished order of the Court of Appeals, entered 12/21/06 (Docket No. 269251).]

When reviewing a decision to suppress, this Court reviews the trial judge's findings of fact for clear error and will uphold those findings unless left with a definite and firm conviction that a conviction that a mistake was made. *People v Taylor*, 253 Mich App 399, 403; 655 NW2d 291 (2002). This Court reviews de novo the trial judge's ultimate ruling on the defendant's motion to suppress. *Id.*

In *People v Jenkins*, 472 Mich 26, 31-33; 691 NW2d 759 (2005), our Supreme Court addressed the differences between a consensual police-citizen encounter and a "seizure" under the Fourth Amendment:

The United States Constitution and the Michigan Constitution guarantee the right of persons to be secure against unreasonable searches and seizures. US Const, Am IV; Const 1963, art 1, § 11.

Under certain circumstances, a police officer may approach and temporarily detain a person for the purpose of investigating possible criminal behavior even though there is no probable cause to support an arrest. *Terry v Ohio*, 392 US 1, 22; 88 S Ct 1868; 20 L Ed 2d 889 (1962). A brief detention does not violate the Fourth Amendment if the officer has a reasonably articulable suspicion that criminal activity is afoot. [*People v*] *Custer, supra* [465 Mich 319] at 327[; 630 NW2d 870 (2001)]; *People v Oliver*, 464 Mich 184, 192; 627 NW2d 297 (2001); *Terry, supra* at 30-31. Whether an officer has a reasonable suspicion to make such an investigatory stop is determined case by case, on the basis of an analysis of the totality of the facts and circumstances. *Oliver, supra* at 192. . . .

Of course, not every encounter between a police officer and a citizen requires this level of constitutional justification. A "seizure" within the meaning of the Fourth Amendment occurs only if, in view of all the circumstances, a reasonable person would have believed that he was not free to leave. *People v Mamon*, 435 Mich 1, 11; 457 NW2d 623 (1990). When an officer approaches a person and seeks voluntary cooperation through noncoercive questioning, there is no restraint on that person's liberty, and the person is not seized. *Florida v Royer*, 460 US 491, 497-498; 103 S Ct 1319; 75 L Ed 2d 229 (1983) (plurality opinion).

In the instant case, on remand, the district court concluded that the interaction went beyond a consensual police-citizen encounter and entered the realm of an unjustified *Terry* stop. The court's reasoning is somewhat unclear, as the court's analysis was again directed to the question whether the officer acted on reasonable suspicion. Nevertheless, it is evident that the court concluded that defendant was detained, and that the detention went beyond a consensual encounter. This conclusion is supported by evidence that the officer's encounter with defendant was prolonged -- not a matter of initiating and asking a few non-coercive questions -- and that it continued notwithstanding the fact that defendant gave reasonable and cogent answers. Defendant testified that he did not feel that he was free to leave after the officer got out of his vehicle, after initially conversing with defendant from within the police vehicle, came up to defendant, and began shooting rapid-fire questions at defendant, not letting him finish his answer to one question before asking the next. The essence of the court's reasoning seems to be that the officer would not let defendant leave until he had completed his investigation. This

determination, as well as the determination that the officer acted without reasonable suspicion, are adequately supported by the record.

Under these circumstances, we will not disturb the district and circuit courts' determinations that the encounter went beyond a consensual police-citizen encounter.

Affirmed.

/s/ Donald S. Owens

/s/ Helene N. White

/s/ Joel P. Hoekstra